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12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE DISTRICT OF NEVADA**

14 PETER DELVECCHIA, individually and as ) Case No.: 2:19-cv-01322-KJD-NJK  
15 next friend of A.D., a Minor, )  
16 Plaintiff, )  
17 v. )  
18 FRONTIER AIRLINES, INC. and )  
19 JOHN DOES 1 through 5, inclusive, )  
20 Defendants. )  
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**DEFENDANT FRONTIER AIRLINES, INC.'S PARTIAL MOTION TO STRIKE**

22 Defendant FRONTIER AIRLINES, INC. ("Frontier"), by its undersigned counsel, submits this  
23 Partial Motion to Strike pursuant to Fed. R. Civ. P. 12(f)(2). Frontier's Motion is premised on the  
24 attached Memorandum of Points and Authorities, the pleadings on file, and any oral argument this Court  
25 may permit.

26 DATED this 29th day of August, 2019.

27 ROGERS, MASTRANGELO, CARVALHO &  
28 MITCHELL

/s/ *Charles A. Michalek*

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

I.

## INTRODUCTION

This civil action arises from an incident that occurred on March 28, 2019 onboard Frontier Flight 2067 from Raleigh, North Carolina to Las Vegas, Nevada. On August 1, 2019, Plaintiffs Peter DelVecchia (“Peter”) and A.D., a minor through next friend Peter DelVecchia (“A.D.”) (collectively “Plaintiffs”), filed their six-count Complaint against Frontier and John Does 1 through 5, seeking compensatory and punitive damages for an alleged violation of 42 U.S.C. § 1981 (Count I), intentional infliction of emotional distress (Count II), negligent infliction of emotional distress (Count III), false imprisonment / unlawful detention (Count IV), battery (Count V), and defamation and false light invasion of privacy (Count VI). (Doc. #1.)

This Court should strike Plaintiffs' Request for Punitive Damages for all of their causes of action pursuant to Fed. R. Civ. P. 12(f)(2) because there are no factual allegations that Frontier is guilty of oppression, fraud, or malice, express or implied. See Nev. Rev. Stat. § 42.005.

II.

## LEGAL STANDARD

**A. Motion to Strike**

“The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). The purpose of a Rule 12(f) motion to strike is “to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial.” *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993). Whether to grant a motion to strike lies within the discretion of the district court. *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010).

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III.

## ARGUMENT

A. This Court should strike Plaintiffs' punitive damages allegations in Counts I through VI because Plaintiffs do not have any factual support for such claim.

In Nevada, a plaintiff may recover punitive damages “where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied.” Nev. Rev. Stat. § 42.005 “Common law definitions apply for oppression, fraud, and malice.” *Id.* “Oppression occurs when the plaintiff is subjected to cruel and unjust hardship in conscious disregard of his rights.” *Desert Palace, Inc. v. Ace Am. Ins. Co.*, No. 2:10-cv-01638-RLH-LRL, 2011 U.S. Dist. LEXIS 21603, at \*12-13 (D. Nev. Mar. 1, 2011). “Malice refers to conduct which is intended to injure a person or conduct with a conscious or deliberate disregard of the rights or safety of others.” *Id.* at \*13. “Fraud is found where a party intentionally makes a false representation to a plaintiff who relies upon that false statement to his detriment.” *Id.*

Here, all six counts of Plaintiffs' Complaint seek punitive damages. (Doc. #1, ¶¶ 25, 30, 34, 38, 42, 42 [sic].) However, each count simply repeats that Frontier is liable for punitive damages because its "conduct was based on malice and/or reckless indifference to Plaintiffs' legal rights." *Id.* This repeated allegation does not meet the common law definitions of oppression, fraud, or malice, and also does not provide any additional facts to support Plaintiffs' claim. The Supreme Court has decreed that "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Therefore, this Court should strike Plaintiff's claims for punitive damages.

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IV.

## CONCLUSION

For the foregoing reasons, Defendant FRONTIER AIRLINES, INC. respectfully requests that this Court enter an Order striking Plaintiffs' punitive damages allegations in Counts I through VI pursuant to Fed. R. Civ. P. 12(f)(2), and for such further relief as this Court deems just and reasonable.

DATED this 29th day of August, 2019.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

*/s/ Charles A. Michalek*

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**CERTIFICATE OF SERVICE**

Pursuant to LR IC 4-1, I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 29<sup>th</sup> day of August, 2019, a true and correct copy of the foregoing **DEFENDANT FRONTIER AIRLINES, INC.'S PARTIAL MOTION TO STRIKE** was electronically filed with the Clerk of the Court for the United States District Court for the District of Nevada using the CM/ECF system. The foregoing document was served upon the following counsel of record as indicated below:

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**An Employee of  
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